



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2022-0103; FRL-9624-01-R8]

Air Plan Approval; CO; Reg 3 NSR and APEN Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the State of Colorado on May 13, 2020. The revisions contain amendments to the State's New Source Review (NSR) permitting program and Air Pollution Emission Notices (APENs). The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2022-0103, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6227, email address: leone.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

On May 13, 2020, the State of Colorado adopted and repealed revisions to Regulation Number 3 (Stationary Source Permitting and Air Pollution Emission Notice Requirements) Part A (Concerning General Provisions Applicable to Reporting and Permitting), Part B (Concerning Construction Permits) and Part C (Concerning Operating Permits.) The revisions we are acting on are in Colorado’s minor source permitting program. The EPA is proposing to approve all of the revisions submitted on May 13, 2020, with the exception of the revision to Part A, Section II.A.2.a, which was not extended by the Colorado General Assembly and expired effective May 15, 2021. As a result, this section is no longer in Regulation Number 3. We received a letter from Colorado requesting to withdraw this provision from the May 13, 2020 submittal on October 15, 2021 (See docket.) along with revisions to Appendix B (Non-Criteria Reportable Pollutants), as

they are not part of the SIP. We will also not be acting on the revisions to Regulation Number 7, as they were acted on in a separate action on November 5, 2021 (86 FR 61071).

The May 13, 2020 submittal contains the following revisions to Regulation 3, Parts A, B and C:

1. Revises existing definitions and adds an existing definition used in Regulation Number 7 (Control of Ozone via Ozone Precursors and Hydrocarbons via Oil and Gas Emissions);
2. Updates the APEN reporting and permitting requirements for oil and gas well production facilities;
3. Clarifies and narrows certain exemptions and repeal certain exemptions related to oil and gas wastewater impoundments;
4. Revises the SIP to more closely align language with Colorado Statutes;
5. Clarifies when transfer of ownership forms are due and where the compliance responsibilities lie during the transfer process; and
6. Corrects typographical, grammatical and formatting errors found throughout the regulations.

II. The EPA's Evaluation

A. Revisions to Regulation 3, Part A

I. - Applicability

1) I.B.47

The definition of "Well Production Facility" is added. This is approvable, as the definition already exists in Regulation Number 7, I.B.30. This definition was added to Regulation Number 3 to promote consistency throughout the State's permitting regulations. This definition was previously referred to as the undefined term "exploration and production." This revision meets the statutory and regulatory requirements as outlined in Section III. below of this proposed rulemaking.

2) I.B.12

The definition of “Commencement of Operation” is revised. This revision is approvable. The definition reflects that when permanent equipment is on-site and operating, commencement of operation has occurred, even if there is temporary equipment on-site. For example, if a well is producing into one temporary tank and two permanent storage tanks, the storage tanks have commenced operation for purposes of Regulation Number 3. The revision separates the requirement from any specific stage of well operation. The revised definition clarifies that commencement of operation is not always determined by the transition of well completion operations into startup of production as those terms are defined in 40 CFR 60.5430a (subpart OOOOa). However, to ensure that an operator cannot continue to produce into temporary tanks indefinitely and thus avoid APEN reporting and permitting requirements, this revision clarifies that the end of the flowback is the latest date at which commencement of operation may occur.

This revision also ensures consistency across Colorado’s State air regulations, as the revised definition of “commencement of operation” in Regulation Number 3 is the same as the federally approved definition of “commencement of operation” in Regulation Number 7, Part D, I.D.7.

II. Air Pollution Emission Notice Requirements

1) II.A.1

This paragraph adds the phrase “provided in Section II.A.2 below, or as” to reflect the addition of new paragraph II.A.2. Colorado has withdrawn Section II.A.2 and, as a result, we are not taking action on this revision.

2) II.A.2.a

As mentioned in Section I. of this action, the addition of this paragraph has been withdrawn by the State of Colorado, thus, this revision will not be acted on. As a result, owners or operators of well production facilities must submit APENs prior to the

construction, modification, or alteration of the facility, as specified for all other sources in Section II.A.1, which requires that facilities cannot emit air pollutants from a stationary source unless an APEN and associated fees have been filed with the Division.

In other words, owners and operators of well production facilities must apply for an APEN prior to commencement of operation. APENs require owners or operators to specify the location at which the proposed emission source will occur, the name and address of the persons operating and owning such a facility, the nature of the facility, process or activity, an estimate of the quantity and composition of the expected emissions, among other requirements. Thus, this revision meets the statutory and regulatory requirements as outlined in Section III. of this proposed rulemaking.

3) II.A.2(b)

This paragraph requires owners or operators of well production facilities to file an APEN prior to the modification of well production facilities. This is a similar requirement as stated in II.A.1. This revision meets the statutory and regulatory requirements as outlined in Section III of this proposed rulemaking.

III. Exemptions from Air Pollution Emission Notice Requirements

1) Section II.D.1.III

This exemption was repealed to reflect the withdrawal of Part A Section II.A.2.a. Section II.D.1.III. provides that the owner or operator of an oil and gas exploration and production operation shall file an APEN with the Division thirty days after well completion. If production will result in reportable emissions, the owner or operator shall file an APEN within thirty days after the report of first production is filed with the State, but no later than ninety days. As a result of this section being repealed, owners or operators are now required to file an APEN prior to commencement of operations, as required in Part A, Section II.A.1.

B. Revisions to Regulation 3, Part B (Concerning Construction Permits)

II.A – General requirements for Construction Permits

1) II.A.1 and III.I.2.a

In Section II.A.1, the phrase “commence construction of” is replaced with the phrase “construct, modify or operate” and the phrase “modification of a stationary source” is replaced by the phrase “commence the conduct of and such activity.” Similar language changes were made in Section III.I.2.a.

These language revisions align with the existing language in the Air Pollution Prevention and Control Act provisions regarding permits (See 25-7-114.2. C.R.S.) These revisions reflect how the Colorado construction permitting program has been operated and implemented, and to ensure consistency with the governing statute. These revisions will not change the timing of the requirement to obtain a construction permit.

II.B – Transfer or Assignment of Ownership

1) II.B

Colorado revised Section II.B. to clarify that a transfer of ownership form is due to the State within 30 days of the completion of a transfer or assignment of ownership for re-issuing of existing permits. The current language indicates that a “prospective” owner must submit the transfer of ownership form, indicating that the form must be submitted prior to acquisition. The revised language provides clarity for sources about this requirement. The language has also been modified to state that the requirements for compliance with existing permitting requirements transfer to the new owner or operator when the forms are submitted.

II.D. – Exemptions from Air Pollution Notice Requirements

1) II.D.7

Section II.D.7 was repealed to reflect the removal of Part A Section II.A.2.a. Section II.D.7 provides that oil and gas exploration and production operations that are required to obtain a construction permit are not required to file an application for a construction permit until they are required to file an APEN. This section was not extended by the Colorado General Assembly and expired effective May 15, 2021; thus, it is no longer in Regulation

Number 3. As a result, all well production facilities must file for a construction permit prior to commencement of operation, as stated in Part A, Section II.A.1.

III.B. – Application for a Construction Permit

1) *III.B.2*

The phrase “or alternate forms required by the division” was added to this section to give owners or operators additional application form options, as described in Regulation 3, Part A.III.H.1. – General Construction Permits.

2) *III.I.2*

The term “commence construction” was replaced with the term “construct, operate.” This revision clarifies that an owner or operator cannot operate a new or modified source until a general construction permit is received.

C. Additional Exemptions repealed and Clarifications in Parts A, B and C

- 1) Part A, Section II.D.1.zzz and Part C, Section II.E.dddd contain exemptions from filing an APEN and operating permit for venting of natural gas lines for safety purposes. The revisions add that this exemption does not apply to “routine or predictable emissions at or associated with a stationary source.”
- 2) The exemptions in Part A, Section II.D.1.uuu, Part B, Section II.D.1.m, Part C, Section II.E.3.uu and II.E.3.yyy are being revised to no longer exempt oil and gas production wastewater impoundments that contain less than 1 percent by volume crude oil on an annual average from APEN and reporting requirements.

III. Proposed Action

Based on the above discussion, the EPA finds that the repealed and revised sections of Colorado’s air permitting regulations outlined in Section II., as submitted by the State of Colorado on May 13, 2020, will not interfere with attainment or maintenance of any national ambient air quality standard (NAAQS) in the State and would not interfere with any other applicable requirement of the CAA. Thus, we are proposing to approve all SIP revisions in this

proposed rulemaking, as the revisions to Parts A, B and C corresponding to APEN, construction permitting and operating permitting requirements do not exceed or differ from the requirements of the CAA or Federal regulations; in particular, as outlined below:

1) The statutory requirements under CAA section 110(a)(2)(c), which requires states to include a minor NSR program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are achieved;

2) The regulatory requirements under 40 CFR 51.160, including § 51.160(a), which require that the SIP include legally enforceable procedures that enable a state or local agency to determine whether construction or modification of a facility, building, structure or installation, or a combination of these will result in a violation of applicable portions of the control strategy; or interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state; §51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS; and

3) The statutory requirements under CAA section 110(l), which provides that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. Therefore, EPA will approve a SIP revision only after a state has demonstrated that such a revision will not interfere (“noninterference”) with attainment of the NAAQS, RFP or any other applicable requirement of the CAA.

EPA has determined that these revisions are approvable under CAA 110(a)(2)(C), 40 CFR 51.160-164 and CAA section 110(l). Therefore, we are proposing to approve the revisions as submitted by the State of Colorado on May 13, 2020.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the revisions described in Section II. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

(Authority: 42 U.S.C. 7401 *et seq.*)

Dated: March 18, 2022.

KC Becker,

Regional Administrator,

Region 8.

